

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

RYAN W. PAYNE,

Defendant.

Case No. 2:16-cr-00046-GMN-PAL

AMENDED ORDER

(Sealed *Ex Parte* Mots. for Subpoenas –
ECF Nos. 2686–88)

This amended order corrects a scrivener's error on the last page of the original Order (ECF No. 2700) regarding the witnesses' travel, lodging, and/or expenses.

* * *

This matter is before the court on Defendant Ryan W. Payne's Sealed *Ex Parte* Motions for Subpoenas (ECF Nos. 2686, 2687, 2688), which were filed pursuant to Rule 17 of the Federal Rules of Criminal Procedure and LCR 17-1 of the Local Criminal Rules of Practice. These motions are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 and 1-7(g) of the Local Rules of Practice.

The motions ask the court to issue subpoenas to three employees of the Bureau of Land Management to compel their testimony in an evidentiary hearing before the Honorable Chief Judge Gloria M. Navarro on Monday, October 23, 2017, at 9:00 a.m. The court has reviewed the motions and finds that Mr. Payne has met his threshold burden under Rule 17 for issuance of the subpoenas. In addition, the court has already found that Mr. Payne is indigent. Accordingly, the court will grant the motions and issue the subpoenas to the following individuals: Kent Kleman, Danielle Cardenas, and Toni Suminski. In granting the request, the court expresses no opinion regarding the admissibility of the scope of the witnesses' proposed testimony as that is an issue for Judge Navarro to consider.

1 However, the court does not find good cause for the motions or this order to remain *ex*
 2 *parte* and under seal. *See Nixon v. Warner Comm'ns, Inc.*, 435 U.S. 589, 597 (1978) (recognizing
 3 "a general right to inspect and copy public records and documents, including judicial records and
 4 documents."). Although *ex parte* applications are permissible in limited circumstances, they are
 5 generally disfavored. *United States v. Daniels*, 95 F. Supp. 2d 1160, 1162–63 (D. Kan. 2000) (*ex*
 6 *parte* applications permissible where source or integrity of evidence would be imperiled or trial
 7 strategy disclosed); *United States v. Tomison*, 969 F. Supp. 587, 589–95 (E.D. Cal. 1997) (*ex parte*
 8 applications permitted where a subpoena served on third party and notice would compromise trial
 9 strategy). In two recent motions (ECF Nos. 2613, 2696), defense counsel informed the court and
 10 the government of their intent to subpoena these individuals as witnesses for purposes of this
 11 evidentiary hearing. Thus, disclosure to opposing counsel will not compromise defense strategy.
 12 The Clerk of the Court will be directed to unseal the motions.

13 Accordingly,

14 **IT IS ORDERED:**

- 15 1. Defendant Ryan W. Payne's Sealed *Ex Parte* Motions for Subpoenas (ECF Nos. 2686,
 16 2687, 2688) are **GRANTED**.
- 17 2. The Clerk of the Court shall UNSEAL Payne's motions (ECF Nos. 2686, 2687, 2688).
- 18 3. The Clerk of the Court shall issue the proposed subpoenas (ECF Nos. 2686-1, 2687-1,
 19 2688-1) to the following individuals commanding him or her to appear at the
 20 evidentiary hearing before the Honorable Chief Judge Gloria M. Navarro on Monday,
 21 October 23, 2017, at 9:00 a.m.: (1) Kent Kleman, (2) Danielle Cardenas, and (3) Toni
 22 Suminski.
- 23 4. The Clerk of the Court shall deliver a copy of this order and the subpoenas to the United
 24 States Marshal.
- 25 5. The United States Marshal shall serve a copy of this order and the subpoenas to the
 26 designated Department of Interior official:


27 ///

28 ///

1 Kent Kleman
2 BLM Office of Law Enforcement and Security
3 1387 S. Vinnell Way
4 Boise, Idaho 83709

- 5 6. Pursuant to the court's September 11, 2017 Order (ECF No. 2351), Kent Kleman will
6 accept and serve defense subpoenas for Department of Interior personnel and promptly
7 inform defense counsel if process cannot be effected.
- 8 7. The United States Attorney's Office is not responsible for arranging for or reimbursing
9 the witnesses for travel, lodging, or expenses. *See* Order (ECF No. 2351), U.S.
10 Marshals Service, *Public Defender's Handbook*, available at
11 www.usmarshals.gov/prisoner/pdhandbook.

12 Dated this 16th day of October, 2017.

13 
14 PEGGY A. LEEN
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28